

Senate Daily Reader

Friday, February 18, 2005

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State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

670L0291

HOUSE COMMERCE COMMITTEE ENGROSSED NO. **HB 1101** - 01/27/2005

Introduced by: Representatives Rounds, Boomgarden, Bradford, Elliott, Hargens, Hunt, Krebs, Olson (Ryan), Pederson (Gordon), Schafer, Sebert, and Street and Senators Schoenbeck, Abdallah, Broderick, McCracken, Moore, Nesselhuf, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to except contracts of independent contractors who are
2 captive insurance agents from the prohibition against contracts in restraint of trade.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 53-9-8 be amended to read as follows:

5 53-9-8. ~~Every~~ Any contract restraining exercise of a lawful profession, trade, or business is
6 void to that extent, except as provided by §§ 53-9-9 to 53-9-11, inclusive, and section 2 of this
7 Act.

8 Section 2. That chapter 53-9 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 Any independent contractor who is an insurance producer as defined in subdivision 58-1-
11 2(16) and is a captive agent who is not an independent agent and who works exclusively for a
12 single insurance company or an affiliated group of insurance companies, even if the single
13 insurance company allows its captive agents to market the products of another insurance
14 company pursuant to contract, may agree with an insurer at the time of contracting or at any time



1 during the term of the contract:

2 (1) Not to engage directly or indirectly in the same business or profession as that of the
3 insurer for any period not exceeding two years from the date of termination of the
4 independent contractor's agreement with the insurer; and

5 (2) Not to solicit existing customers of the insurer within a specified county, first or
6 second class municipality, or other specified area for any period not exceeding two
7 years from the date of termination of the agreement, if the insurer continues to carry
8 on a like business within the specified area.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

195L0196

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1110** - 02/02/2005

Introduced by: Representatives Tornow, Buckingham, Cutler, Koistinen, Krebs, McLaughlin, Michels, Miles, Murschel, Rounds, Thompson, and Van Norman and Senators Knudson, Earley, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the circumstances
2 under which absentee voting is permitted.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 12-19-2.1 be amended to read as follows:

5 12-19-2.1. At anytime prior to an election, a voter may apply in person to the person in
6 charge of the election for an absentee ballot during regular office hours up to 3:00 p.m. of the
7 day of the election. If the voter applies in person, the voter shall show the person in charge of
8 the election the voter's identification card as required in § 12-18-6.1 or complete the affidavit
9 as provided in § 12-18-6.2.

10 In the event of sickness or confinement, a qualified voter may apply pursuant to the
11 provisions of § 12-19-2 in writing for and obtain an absentee ballot by authorized messenger
12 so designated over the signature of the voter. The person in charge of the election may deliver
13 to the authorized messenger a ballot to be delivered to the qualified voter. An application for
14 a ballot by authorized messenger must be received by the person in charge of the election before



- 1 3:00 p.m. the day of the election. On the day of the election, any qualified voter may use the
- 2 authorized messenger provision.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

259L0289

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1190** - 02/07/2005

Introduced by: Representatives Rhoden, Boomgarden, Brunner, Buckingham, Cutler, Davis, Deadrick, Dykstra, Faehn, Frost, Fryslie, Garnos, Hackl, Halverson, Hanks, Hargens, Haverly, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Kraus, McCoy, Michels, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rounds, Sebert, Sigdestad, Street, Tidemann, Turbiville, Valandra, Vehle, Weems, Wick, and Willadsen and Senators Koskan, Abdallah, Bartling, Bogue, Broderick, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hundstad, Lintz, McCracken, McNenny, Moore, Napoli, Peterson (Jim), Smidt, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for recognition of certain valid nonresident
2 permits to carry a concealed pistol.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 23-7 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Any valid permit to carry a concealed pistol, issued to a nonresident of South Dakota, is
7 valid in South Dakota according to the terms of its issuance in the state of its issue, but only to
8 the extent that the terms of issuance comply with any appropriate South Dakota statute or
9 promulgated rule. However, if the holder of such a nonresident permit to carry a concealed
10 pistol becomes, at any time, a legal resident of South Dakota, the provisions of this section no
11 longer apply.



State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

754L0116

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **HB 1209** - 02/07/2005

Introduced by: Representatives Novstrup, Boomgarden, Bradford, Brunner, Buckingham, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Fryslie, Garnos, Glover, Hackl, Haley, Halverson, Hargens, Heineman, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Kraus, Krebs, McCoy, McLaughlin, Miles, Nelson, O'Brien, Pederson (Gordon), Peters, Putnam, Rave, Rhoden, Rounds, Schafer, Sigdestad, Street, Thompson, Tidemann, Turbiville, Valandra, Vehle, Weems, and Willadsen and Senators Abdallah, Bartling, Bogue, Broderick, Duenwald, Duniphan, Hanson (Gary), Hundstad, Kelly, Knudson, Koskan, Lintz, McCracken, McNenny, Peterson (Jim), Sutton (Dan), and Two Bulls

1 FOR AN ACT ENTITLED, An Act to provide for limited confidentiality of certain firearms
2 information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No state agency, political subdivision, official, agent, or employee of any state
5 agency or political subdivision, or any other person may knowingly keep or cause to be kept any
6 list, record, or registry of privately owned firearms or any list, record, or registry of the owners
7 of those firearms, or any list, record, or registry of holders of permits to carry a concealed pistol.

8 Section 2. The provisions of section 1 of this Act do not apply to:

- 9 (1) Records of firearms that have been used in committing any crime;
- 10 (2) Permits to carry a concealed pistol records relating to any person who has been
- 11 convicted of a felony;



(3) Records of the serial numbers of firearms that have been reported stolen that are retained for a period not in excess of ten days after such firearms are recovered and returned to the lawful owner. However, official documentation recording the theft of a recovered weapon may be maintained no longer than the balance of the year entered and two additional years;

(4) Firearm records that must be retained by firearm dealers under federal law, including copies of such records transmitted to law enforcement agencies;

(5) Any on duty law enforcement officer while conducting routine verification of the validity of a permit to carry a concealed pistol; and

(6) The secretary of state for the issuance of concealed pistol permits pursuant to chapter 23-7 and any access reasonably necessary to verify information with regard to specific permits individually.

Section 3. That § 23-7-8.5 be repealed.

~~23-7-8.5. No information from a concealed pistol permit issued pursuant to § 23-7-8 may be transferred by the local issuing authority to any agency other than the secretary of state. The secretary of state may not allow information from any concealed pistol permit to be electronically accessible to any other agency or person or to be transferred to any other agency or person for the purpose of establishing or maintaining a statewide electronic database.~~

Section 4. The provisions of this Act do not restrict any law enforcement officer in the performance of any official duty if the law enforcement officer is in the immediate physical presence of a permit holder who has either presented a permit to the officer or declared to the officer that he or she is a permit holder.

Section 5. The provisions of this Act do specifically prohibit any law enforcement officer from retaining any notes, data, or pieces of information, either collectively or individually,

- 1 unless the retention of such notes, data, or pieces of information is pertinent to a specific
- 2 ongoing investigation or prosecution.

State of South Dakota

EIGHTIETH SESSION
LEGISLATIVE ASSEMBLY, 2005

336L0767

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1239** - 02/08/2005

Introduced by: Representatives Hargens and Haley and Senator Moore

1 FOR AN ACT ENTITLED, An Act to revise the method for setting the fees that may be
2 received by a county coroner.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 7-14-1 be amended to read as follows:

5 7-14-1. The coroner shall receive ~~the following~~ fees and expenses:

6 ~~(1) For a view of each body and examination of the circumstances surrounding the death,~~
7 ~~fifty-eight dollars;~~

8 ~~(2) The coroner shall receive the same amount per mile traveled in the course of his~~
9 ~~duties as other county officials~~ as set by the board of county commissioners.



State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0314

HOUSE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 41** - 02/07/2005

Introduced by: The Committee on Health and Human Services at the request of the
Department of Health

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding access to vital
2 records.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 34-25-1.1 be amended by adding thereto a NEW SUBDIVISION to read
5 as follows:

6 "Authorized representative," an attorney, physician, funeral director, or other designated
7 agent acting on behalf of the family.

8 Section 2. That § 34-25-8 be amended to read as follows:

9 34-25-8. The birth of every child born in this state shall be registered as provided in this
10 chapter. Within seven days after the date of each live birth, there shall be filed with the
11 department by electronic means if a facility has such capabilities, or otherwise if electronic
12 means are not available, a certificate of such birth, ~~which.~~ The certificate shall be upon the form
13 prescribed by the department. For certificates of birth filed after seven days, but within one year
14 from the date of birth, the department may, by rules promulgated pursuant to chapter 1-26,
15 require additional evidence in support of the facts of birth.



1 ~~Certified~~ Informational copies of birth records shall be available to any person who can
2 identify the birth record by providing the name of the person on the birth record, the date of
3 birth, the mother's maiden name, or additional information required to locate the record.
4 Nothing in this section prohibits the release of information contained on a birth record which
5 would not identify any person named in the record.

6 If one hundred years have elapsed after the date of birth, the records of the birth in the
7 custody of the department shall become available to the public without restriction. The
8 department shall promulgate rules, pursuant to chapter 1-26, to provide for the continued
9 safekeeping of these records.

10 Section 3. That § 34-25-52 be amended to read as follows:

11 34-25-52. ~~The Department of Health shall upon request supply to any applicant a certified~~
12 ~~copy of the record of any birth, death, fetal death, marriage, or divorce registered under the~~
13 ~~provisions of this chapter, for the making and certification of which he shall be entitled to a fee~~
14 ~~based upon administrative cost as established by the department pursuant to chapter 1-26 to be~~
15 ~~paid by the applicant. Information in vital records indicating that a birth occurred out of wedlock~~
16 ~~shall not be disclosed except as provided by regulation or upon order of a court of competent~~
17 ~~jurisdiction. Any record or a certified copy thereof shall be prima facie evidence in all of the~~
18 ~~courts of this state of the facts therein stated~~ The department or authorized local registrars shall,
19 upon receipt of an application, issue a certified copy of a vital record to the registrant or the
20 registrant's spouse, children, parents, guardian, next of kin, or authorized representative. The
21 department may authorize others to obtain certified copies in response to a demonstration that
22 the record is needed for the determination or protection of a personal or property right. The
23 department or authorized local registrars shall upon receipt of an application, issue
24 informational copies to any applicant of any vital record. The department or authorized local

1 registrar may withhold the immediate issuance of any certified copy for a period of no longer
2 than three days. The department shall be entitled to a fee based upon administrative cost as
3 established by the department pursuant to chapter 1-26 for each search of the files and records.
4 The fee shall be paid in advance by the applicant and shall not be in addition to the fee
5 hereinbefore provided for the making and certification of the record but shall be applied in
6 payment thereof if the record is found.

7 Section 4. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 All forms and procedures used in the issuance of certified and informational copies of vital
10 records shall be uniform and shall be provided or approved by the state registrar. The
11 department shall promulgate rules pursuant to chapter 1-26 to determine application
12 requirements for a certified and an informational copy of a vital record, acceptable proof of
13 identity, and the features required in a certified or informational copy.

14 Section 5. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 Nothing in this chapter may be construed to permit disclosure of information contained in
17 the "Information for Medical and Health Use Only" section of the birth certificate or the
18 "Information for Statistical Purposes Only" section of the certificate of marriage or certificate
19 of divorce unless specifically authorized by the department for statistical or research purposes.
20 Such data is not subject to subpoena or court order and is not admissible before any court,
21 tribunal, or judicial body.

22 Section 6. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as
23 follows:

24 To protect the integrity of vital records, ensure their proper use, and to ensure the efficient

1 and proper administration of the vital records system, no employee of the state vital records
2 office, local registrar, or deputy registrar may permit inspection of any vital record or disclose
3 information contained in any vital record or issue a copy of all or part of any such record unless
4 authorized by this chapter or a court of competent jurisdiction.

5 Section 7. That § 34-25-57 be amended to read as follows:

6 34-25-57. No person, officer, agent, or employee of any other person or of any corporation
7 or partnership may:

- 8 (1) Inter, cremate, or otherwise finally dispose of a dead body of a human being or
9 permit the same to be done or remove the body from the state without authority of
10 a burial or removal permit;
- 11 (2) Refuse or fail to furnish any information in such person's possession or furnish false
12 information affecting any certificate or record required by this chapter;
- 13 (3) Intentionally falsify any certificate of birth, death, or burial or removal permit or any
14 record required by this chapter;
- 15 (4) Being required by this chapter to fill out a certificate of birth or death and file the
16 certificate with the local registrar or deliver it upon request to any person charged
17 with the duty of filing the certificate, fail, neglect, or refuse to perform;
- 18 (5) Being an employee of the state vital records office, a local registrar or deputy
19 registrar, intentionally fail, neglect, or refuse to perform the duty as required by this
20 chapter or by the rules adopted by the secretary of health or by the instructions and
21 directions of the department;
- 22 (6) Intentionally make, counterfeit, alter, amend, or mutilate any certificate, record, or
23 report required by this chapter or a certified copy of the certificate, record, or report
24 for the purpose of deception;

1 (7) Obtain, possess, use, sell, or furnish to another, or attempt to obtain, possess, use,
2 sell, or furnish to another, any certificate, record, or report, or certified copy thereof,
3 required by this chapter, whether altered in any manner or not, for any purpose of
4 deception; or

5 (8) Possess any certificate, record, or report, or copy thereof, required by this chapter,
6 knowing that the certificate, record, or report, or copy thereof, was stolen or
7 otherwise obtained unlawfully.

8 A violation of this section is a Class 1 misdemeanor.

9 Section 8. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 No employee of the state vital records office, local registrar, or deputy registrar may be held
12 personally liable for any unintentional issuance of any certified copy of any vital record
13 fraudulently obtained.

State of South Dakota

EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

339L0669

HOUSE ENGROSSED NO. **SCR 5** - 02/16/2005

Introduced by: Senators Smidt, Abdallah, Adelstein, Apa, Bartling, Bogue, Broderick, Dempster, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, Knudson, Koetzle, Kooistra, Koskan, Lintz, McCracken, McNenny, Moore, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Schoenbeck, Sutton (Dan), and Sutton (Duane) and Representatives Wick, Boomgarden, Bradford, Brunner, Buckingham, Cutler, Davis, Deadrick, Dennert, Dykstra, Elliott, Faehn, Frost, Frysle, Garnos, Gassman, Gillespie, Glenski, Glover, Hackl, Haley, Halverson, Hanks, Hargens, Haverly, Heineman, Hennies, Hills, Howie, Hunhoff, Jensen, Jerke, Klaudt, Koistinen, Kraus, Krebs, Kroger, Lange, McCoy, McLaughlin, Michels, Miles, Murschel, Nelson, Novstrup, O'Brien, Olson (Ryan), Pederson (Gordon), Peters, Putnam, Rausch, Rave, Rhoden, Roberts, Rounds, Schafer, Sebert, Sigdestad, Street, Thompson, Tidemann, Tornow, Turbiville, Van Etten, Vehle, Weems, and Willadsen

1 A CONCURRENT RESOLUTION, Urging the members of the South Dakota Congressional
2 delegation to sponsor and support the Streamlined Sales and Use Tax Act.

3 WHEREAS, the 1967 Bellas Hess and the 1992 Quill Supreme Court decisions denied
4 states the authority to require the collection of sales and use taxes by out-of-state sellers that
5 have no physical presence in the taxing state; and

6 WHEREAS, the combined weight of the inability to collect sales and use taxes on remote
7 sales through traditional carriers and the tax erosion due to electronic commerce threatens the
8 future viability of the sales tax as a stable revenue source for state and local governments; and

9 WHEREAS, the Center for Business and Economic Research at the University of Tennessee



1 has estimated that states lost as much as \$16.1 billion in 2003 because they were not able to
2 collect taxes on remote sales, including sales on the internet and the center estimates that by
3 2006 this revenue loss to states will climb to \$26.5 billion and by 2008 it will be \$33.8 billion;
4 and

5 WHEREAS, the same study estimated that South Dakota lost as much as \$43.8 million in
6 2003 because of this inability to require remote sellers to collect our state's sales and use taxes,
7 and the study further estimates that by 2008 this revenue loss will climb to \$88.6 million; and

8 WHEREAS, South Dakota's sales and use tax base shrinks every day as consumers change
9 their purchase habits while the state government's expenses continue to increase; and

10 WHEREAS, a voluntary streamlined sales and use tax system will generate \$2 million to
11 \$3 million in state taxes which the Legislature and the Governor will make sure does not
12 disappear into the state's budget and is used for those areas critical to our citizens, such as
13 education and property tax relief; and

14 WHEREAS, since 1999, state legislators, governors, local elected officials, state tax
15 administrators, and representatives of the private sector have worked to develop a streamlined
16 sales and use tax collection system for the 21st Century; and

17 WHEREAS, between 2001 and 2002, South Dakota and thirty-four other states enacted
18 legislation expressing the intent of the state to simplify the state's sales and use tax collection
19 systems and to participate in multistate discussions to finalize and ratify an interstate agreement
20 to streamline collection of the states' sales and use taxes; and

21 WHEREAS, on November 12, 2002, delegates from South Dakota and the other states
22 unanimously ratified the Streamlined Sales and Use Tax Agreement, which substantially
23 simplifies state and local sales tax systems, removes the burdens to interstate commerce that
24 were of concern to the Supreme Court, and protects state sovereignty; and

1 WHEREAS, the Streamlined Sales and Use Tax Agreement provides the states with a
2 blueprint to create a simplified and more uniform sales and use tax collection system that when
3 implemented, allows justification for Congress to overturn the Bellas Hess and Quill decisions;
4 and

5 WHEREAS, South Dakota enacted legislation in 2003 to bring this state's sales and use tax
6 statutes into compliance with the Streamlined Sales and Use Tax Agreement; and

7 WHEREAS, by July 1, 2004, twenty-one states, Arkansas, Indiana, Iowa, Kansas, Kentucky,
8 Michigan, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma,
9 South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia and Wyoming,
10 representing over thirty-five percent of the total population of the United States enacted
11 legislation to bring their state's sales and use tax statutes into compliance with the Agreement;
12 and

13 WHEREAS, the Legislature of South Dakota and our colleagues in the other states have
14 shown the resolve to acknowledge the complexities of the current sales and use tax collection
15 system, have worked with the business community to formulate a truly simplified and
16 streamlined collection system, and have shown the political will to enact the necessary changes
17 to make the streamlined collection system the law; and

18 WHEREAS, the Streamlined Sales and Use Tax Act will be introduced in Congress to grant
19 those states that comply with the agreement the authority to require all sellers, regardless of
20 nexus, to collect those states' sales and use taxes; and

21 WHEREAS, supporting the states' effort to comply with the Streamlined Sales and Use Tax
22 Agreement and the federal legislation granting states collection authority are such companies
23 and organizations as: American Booksellers Association, AFL-CIO, American Federation of
24 Teachers, American Federation of State, County and Municipal Employees, American Jewelers

1 Association, Circuit City Stores, Inc., Department for Professional Employees, Electronic
2 Commerce Association, Gateway Companies, Inc., Home Depot, International Association of
3 Firefighters, International Council of Shopping Centers, K-Mart Corporation, Lowe's
4 companies, National Association of College Stores, National Association of Convenience
5 Stores, National Association of Industrial and Office Properties, National Association of
6 Realtors, National Community Pharmacists Association, National Education Association,
7 National Retail Federation, North America Retail Dealers Association, PETsSMART, Inc.,
8 RadioShack Corporation, Service Employees International Union, ShopKo, Staples, Inc., Target,
9 Inc., The Gap, Inc., The Real Estate Roundtable, The Rouse Company, United Food and
10 Commercial Workers International Union, VerticalNet, Inc., Wal-Mart, and Westfield America,
11 Inc.; and

12 WHEREAS, until Congress and the President enact the Streamlined Sales and Use Tax Act,
13 participation by remote sellers is only voluntary making it unlikely that the states will close the
14 revenue gap between what is owed on remote transactions and what is collected; and

15 WHEREAS, Congressman Roy Blunt of Missouri, House Majority Whip, has termed this
16 federal legislation as "fiscal relief for the states that does not cost the federal government a
17 single cent" and ensures the viability of the sales and use tax as a state revenue source;

18 NOW, THEREFORE, BE IT RESOLVED, by the Senate of the Eightieth Legislature of the
19 State of South Dakota, the House of Representatives concurring therein, that the Legislature of
20 South Dakota calls upon the members of our congressional delegation, Senators Tim Johnson
21 and John Thune and Representative Stephanie Herseth, to join as co-sponsors of the Streamlined
22 Sales and Use Tax Act and to support its swift adoption by the Congress of the United States;
23 and

24 BE IT FURTHER RESOLVED, that the Legislature of South Dakota urges President

- 1 George W. Bush to sign the Streamlined Sales and Use Tax Act into law, upon its passage by
- 2 the Congress.